

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF NEW YORK



PLAN FOR PROMPT
DISPOSITION OF CRIMINAL CASES

Final plan pursuant to the Speedy Trial Act
of 1974 - 18 U.S.C. Section 3161, et seq.

GENERAL ORDER #42

I. INTRODUCTION

A. Statement of Adoption by the Court

Pursuant to the requirements of Rule 50(b) of the Federal Rules of Criminal Procedure, the Speedy Trial Act of 1974 (18 U.S.C. Chapter 208), the Speedy Trial Act Amendments Act of 1979 (Pub.L.No. 96-43, 93 Stat.327), and the Federal Juvenile Delinquency Act (18 U.S.C. §§ 5036,5037), the Judges of the United States District Court have adopted the following Plan to minimize undue delay and to further the prompt disposition of criminal cases and certain juvenile proceedings. This Plan reflects the efforts and cooperation of the Court and other offices of the federal criminal justice community of the Northern District of New York.

B. Notice of Adoption by the Court

Copies of the Plan adopted by this District pursuant to 18 U.S.C. §§ 3165, 3166 will be on file with the Clerk in the Albany, Binghamton, Syracuse & Utica offices of the United States District Court and may be obtained there. The Clerk will advise counsel representing defendants in criminal cases and defendants electing *pro se* representation of the existence of the Act, this Plan and any Local Court Rules that may be implemented to augment the Act and the Plan.

C. *Characteristics of the Northern District*

To facilitate an understanding of the problems which may effect compliance with the Speedy Trial Act it is necessary to understand the general make-up of the district. The district is the largest in terms of territory and counties in the Second Circuit. It serves 32 of the 62 counties in New York State and covers 30,511 square miles. Its northern boundary reaches to Canada and its southern boundary extends to Pennsylvania. Although much of the district is rural, it has ten major cities and a population of nearly 3,500,000 persons. It includes the major industrial cities of Syracuse, Binghamton, Utica and Schenectady and the capital of New York State, Albany.

The district has staffed offices in Albany, Binghamton, Syracuse, Utica and Watertown. The court holds continuous jury terms in Albany, Binghamton, Syracuse and Utica. Special jury terms are scheduled throughout the year in Auburn and Watertown. The district has five authorized judgeships and four authorized magistrate judgeships. The United States Attorney has staffed offices in Albany, Binghamton and Syracuse. Assistant U.S. Attorneys travel to Auburn, Utica and Watertown to conduct business.

The district contains numerous major intra and interstate highways and abuts the Canadian border with numerous ports of entry between the two countries. Two of the country's largest navigable bodies of water, the St. Lawrence Seaway and the Hudson River, are inside or abut the district and either directly or through the Erie and Champlain barge canals serve the Port of Albany, which is a major transportation and distribution center for the northeast. The Amtrak and Conrail railroads send passengers and freight to all parts of the country. There are major repair and marshalling yards, among the largest in the nation located in Albany and Rensselaer Counties. The district also has international airports located in Albany, Syracuse and Binghamton with daily flights sending passengers and freight to all parts of the country and abroad.

II. STATEMENT OF TIME LIMITS AND PROCEDURES FOR ACHIEVING PROMPT DISPOSITION OF CRIMINAL CASES

Pursuant to the requirements of Rule 50(b) of the Federal Rules of Criminal Procedure, the Speedy Trial Act of 1974 (18 U.S.C. Chapter 208), the Speedy Trial Act Amendments Act of 1979 (Pub.L.No. 96-43, 93 Stat. 327), and the Federal Juvenile Delinquency Act (18 U.S.C. §§ 5036, 5037), the Judges of the United States District Court for the Northern District of New York have adopted the following time limits and procedures to minimize undue delay and to further the prompt disposition of criminal cases and certain juvenile proceedings.

1. Applicability.

(a) **Offenses.** The time limits set forth herein are applicable to all criminal offenses triable in the Court¹, including cases triable by United States magistrate judges, except for petty offenses as defined in 18 U.S.C. § 19 and Rule 58(a) of the Federal Rules of Criminal Procedure. Except as specifically provided, they are not applicable to proceedings under the Federal Juvenile Delinquency Act. [18 U.S.C. §§ 5031 - 5042]

(b) **Persons.** The time limits are applicable to persons accused who have not been indicted or informed against as well as those who have, and the word "defendant" includes such persons unless the context indicates otherwise.

2. Priorities in Scheduling Criminal Cases.

Preference shall be given to criminal proceedings as far as practicable as required by Rule 50(a) of the Federal Rules of Criminal Procedure. The trial of defendants in custody solely because they are awaiting trial and of high risk defendants as defined in Section 5 should be given preference over other criminal cases. [18 U.S.C. § 3164(a)].

¹18 U.S.C. § 3172 defines "offense" as "any Federal criminal offense which is in violation of any Act of Congress..."

3. Time Within Which an Indictment or Information Must Be Filed.

(a) Time Limits. If an individual is arrested or served with a summons and the complaint charges an offense to be prosecuted in this District, any indictment or information subsequently filed in connection with such charge shall be filed within thirty (30) days of arrest or service.
[18 U.S.C. § 3161(b)]

(b) Grand Jury Not in Session. If the defendant is charged with a felony to be prosecuted in this District, and no grand jury has been in session during the thirty (30) day period prescribed in subsection (a), such period shall be extended an additional thirty (30) days. [18 U.S.C. § 3161(b)].

(c) Measurement of Time Periods. If a person has not been arrested or served with a summons on a Federal charge, an arrest will be deemed to have been made at such time as the person (i) is held in custody solely for the purpose of responding to a Federal Charge; (ii) is delivered to the custody of a Federal official in connection with a Federal charge; or (iii) appears before a judicial officer in connection with a Federal charge.

(d) Related Procedures.

- (i) At the time of the earliest appearance before a judicial officer of a person who has been arrested for an offense not charged in an indictment or information, the judicial officer shall establish for the record the date on which the arrest took place. Notice of arrest shall be made in compliance with Rule 5.1 of the Local Rules of Criminal Procedure.
- (ii) In the absence of a showing to the contrary, a summons shall be considered to have been served on the date of service shown on the return thereof.

4. Time Within Which Trial Must Commence.

(a) Time Limits. In accordance with 18 U.S.C. § 3161(c)(1), the trial of a defendant shall commence not later than Seventy (70) days after the last to occur of the following dates:

- (i) The date on which an indictment or information is filed in this District;
- (ii) The date on which a sealed indictment or information is unsealed; or
- (iii) The date of the defendant's first appearance on such charge before a judicial officer of this District.
- (iv) If a defendant consents in writing to be tried before a magistrate judge on a complaint, the trial shall commence within Seventy (70) days from the date of such consent.

(b) Retrial, Trial After Reinstatement of an Indictment or Information. The retrial of a defendant shall commence within Seventy (70) days from the date the order occasioning the retrial becomes final, as shall the trial of a defendant upon an indictment or information dismissed by a trial court and reinstated following appeal. If the retrial or trial follows an appeal or collateral attack, the Court may extend the period if unavailability of witnesses or other factors resulting from passage of time make trial within Seventy (70) days impracticable. The extended period shall not exceed One Hundred and Eighty (180) days. [18 U.S.C. § 3161(d)(2),(e)].

(c) Withdrawal of Plea. If a defendant enters a plea of guilty or *nolo contendere* to any or all charges in an indictment or information and is subsequently permitted to withdraw it, the time limit shall be determined for all counts as if the indictment or information were filed on the day the order permitting withdrawal of the plea became final. [18 U.S.C. § 3161(i)].

(d) Superseding Charges. If, after an indictment or information has been filed, a complaint, indictment, or information is filed which charges the defendant with the same offense or with an offense required to be joined with that offense, the time limit applicable to the subsequent charge will be determined as follows:

- (i) If the original indictment or information was dismissed on motion of the defendant before the filing of the subsequent charge, the time limit shall be determined without regard to the existence of the original charge.
[18 U.S.C. § 3161(d)(1)].
- (ii) If the original indictment or information is pending at the time the subsequent charge is filed, the trial shall commence within the time limit for commencement of trial on the original indictment or information, however the time from the filing of the superseding charge until the arraignment on the new charge shall be excluded from the speedy trial act clock.
[See USA V. Roman, 822 F.2D 261 (2nd Cir.1987)]
- (iii) If the original indictment or information was dismissed on motion of the United States Attorney before the filing of the subsequent charge, the trial shall commence within the time limit for commencement of trial on the original indictment or information, but the period during which the defendant was not under charges shall be excluded from the computations. Such period is the period between the dismissal of the original indictment or information and the date the time would have commenced to run on the subsequent charge had there been no previous charge.²[18 U.S.C. § 3161(h)(6)].

²Under the rules of this paragraph, if an indictment was dismissed on motion of the prosecutor on September 1, with 20 days remaining within which trial must be commenced, and the defendant was arrested on a new complaint on October 1, the time remaining for trial would be 20 days from October 1: the time limit would be based on the original indictment, but the period from the dismissal to the new arrest would not count. Although the 30-day arrest-to-indictment time limit would apply to the new arrest as a formal matter, the short deadline for trial would necessitate earlier grand jury action.

If the subsequent charge is contained in a complaint, the formal time limit within which an indictment or information must be obtained on the charge shall be determined without regard to the existence of the original indictment or information, but earlier action may in fact be required if the time limit for commencement of trial is to be satisfied.

(e) Measurement of Time Periods. For the purposes of this section:

- (i) If a defendant signs a written consent to be tried before a Magistrate Judge and no indictment or information charging the offense has been filed, the time limit shall run from the date of such consent. [18 U.S.C. § 3161(c)(1)].
- (ii) In the event of a transfer to this District under Rule 20 of the Federal Rules of Criminal Procedure, the indictment or information shall be deemed filed in this District when the papers in the proceeding or certified copies thereof are received and filed by the Clerk.
- (iii) A trial in a jury case shall be deemed to commence at the beginning of *voir dire*.
- (iv) A trial in a non-jury case shall be deemed to commence on the day the case is called, provided that some step in the trial procedure immediately follows.

(f) Related Procedures.

- (I) At the time of the defendant's earliest appearance before a judicial officer of this District, the officer will take appropriate steps to assure that the defendant is represented by counsel pursuant to Local Rule 44.1 of the Rules of Criminal Procedure for the Northern District. The judicial officer shall appoint counsel where appropriate under the Criminal Justice Act, Rule 44 of the Federal Rules of Criminal Procedure, and the Court's Criminal Justice Act Plan. [General Order #1].

- (II) The Court shall have sole responsibility for setting cases for trial after consultation with counsel. At the time of arraignment or as soon thereafter as is practicable, each case will be set for trial on a day certain or listed for trial on a weekly or other short-term calendar. [18 U.S.C. § 3161(a)].
- (III) Individual calendars shall be managed so that it will be reasonably anticipated that every criminal case set for trial will be reached during the week of original setting. A conflict in schedules of Assistant United States Attorneys or defense counsel may be ground for a continuance or delayed setting only if approved by the Court and called to the Court's attention at the earliest practicable time.
- (IV) In the event that a complaint, indictment, or information is filed against a defendant charged in a pending indictment or information or in an indictment or information dismissed on motion of the United States Attorney, the trial on the new charges shall commence within the time limit for commencement of trial on the original indictment or information unless the Court finds that the new charge is not for the same offense charged in the original indictment or information or an offense required to be joined therewith.
- (V) At the time of the filing of a complaint, indictment or information described in paragraph (IV), the United States Attorney shall give written notice to the Court of that circumstance and of the position of the United States Attorney with respect to the computation of the time limits.
- (VI) All pretrial hearings shall be conducted as soon after the arraignment as possible, consistent with the priorities of other matters on the Court's criminal docket.

5. Defendants in Custody and High-Risk Defendants.³

(a) Time Limits. In accordance with 18 U.S.C. § 3164(b), notwithstanding any longer periods that may be permitted under sections 3 and 4 of this Plan, the following time limits will also be applicable to defendants in custody and high-risk defendants as herein defined:

- (i) The trial of a defendant held in custody solely for the purpose of trial on a Federal charge shall commence within ninety (90) days following the beginning of continuous custody.
- (ii) The trial of a high-risk defendant shall commence within ninety (90) days of the designation as high-risk. [18 U.S.C. § 3164(b)].

(b) Definition of "High-Risk Defendant". A high-risk defendant is one reasonably designated by the United States Attorney as posing a danger to himself or herself or any other person or to the community.

(c) Measurement of Time Periods. For the purposes of this section:

- (i) A defendant is deemed to be in detention awaiting trial when he or she is arrested on a Federal charge or otherwise held for the purpose of responding to a Federal charge. Detention is deemed to be solely because the defendant is awaiting trial unless the person exercising custodial authority has an independent basis (not including a detainer) for continuing to hold the defendant.

³If a defendant's presence has been obtained through the filing of a detainer with state authorities, the Interstate Agreement on Detainer, 18 U.S.C., Appendix, may require that trial commence before the deadline established by the Speedy Trial Act. See U.S. v. Mauro, 436 U.S. 340, 356-57 n.24 (1978).

- (ii) If a case is transferred pursuant to Rule 20 of the Federal Rules of Criminal Procedure and the defendant subsequently rejects disposition under Rule 20 or the Court declines to accept the plea, a new period of continuous detention awaiting trial will begin at that time.
- (iii) A trial shall be deemed to commence as provided in sections 4(e)(iii) and 4(e)(iv).

(d) *Related Procedures.*

- (i) If a defendant is being held in custody solely for the purpose of awaiting trial, the United States Attorney shall advise the Court at the earliest practicable time of the date of the beginning of such custody.
- (ii) The United States Attorney shall advise the Court at the earliest practicable time (usually at the hearing with respect to bail) if the defendant is considered by the government to be high-risk.
- (iii) If the Court finds that the filing of a "high-risk" designation as a public record may result in prejudice to the defendant, it may order the designation sealed for such period as is necessary to protect the defendant's right to a fair trial, but not beyond the time that the Court's judgment in the case becomes final. During the time the designation is under seal, it shall be made known to the defendant and his or her counsel but shall not be made known to other persons without the permission of the Court.

(6) Exclusion of Time from Computations.

(a) Applicability. In computing any time limit under section 3,4, or 5, the periods of delay set forth in 18 U.S.C. § 3161(h) shall be excluded. Such periods of delay shall not be excluded in computing the minimum period for commencement of trial under section 7.

(b) Records of Excludable Time. The Clerk of the Court shall enter on the docket, in the form prescribed by the Administrative Office of the United States Courts, information with respect to excludable periods of time for each criminal defendant. With respect to proceedings prior to the filing of an indictment or information, excludable time shall be reported to the clerk by the United States Attorney.

- (i) The attorney for the government and the attorney for the defendant may at any time enter into stipulations with respect to the accuracy of the docket entries recording excludable time.
- (ii) To the extent that the amount of time stipulated by the parties does not exceed the amount recorded on the docket for any excludable period of delay, the stipulation shall be conclusive as between the parties unless it has no basis in fact or law. It shall similarly be conclusive as to a codefendant for the limited purpose of 18 U.S.C. § 3161(h)(7).
- (iii) To the extent that the amount of time stipulated exceeds the amount recorded on the docket, the stipulation shall have no effect unless approved by the court.

(d) Pre-Indictment Procedures.

- (i) In the event that the United States Attorney anticipates that an indictment or information will not be filed within the time limit set forth in section 3, he or she may file a written motion with the Court for a determination of excludable time. In the event that the United States Attorney seeks a continuance under 18 U.S.C. § 3161(h)(8), he or she shall file a written motion with the Court requesting such a continuance.
- (ii) The motion of the United States Attorney shall state (A) the period of time proposed for exclusion, and (B) the basis of the proposed exclusion. If the motion is for a continuance under 18 U.S.C. § 3161(h)(8), it shall also state whether or not the defendant is being held in custody on the basis of the complaint. In appropriate circumstances, the motion may include a request that some or all of the supporting material be considered *ex parte* and *in camera*.
- (iii) The Court may grant a continuance under 18 U.S.C. § 3161(h)(8) for either a specific period of time or a period to be determined by reference to an event (such as recovery from illness) not within the control of the government. If the continuance is to a date not certain, the Court shall require one or both parties to inform the Court promptly when and if the circumstances that justify the continuance no longer exist. In addition, the Court shall require one or both parties to file periodic reports bearing on the continued existence of such circumstances. The Court shall determine the frequency of such reports in the light of the facts of the particular case.

(e) *Post-Indictment Procedures.*

- (i) At each appearance of counsel before the Court, counsel shall examine the clerk's records of excludable time for completeness and accuracy and shall bring to the Court's immediate attention any claim that the Clerk's record is in any way incorrect.
- (ii) In the event that the Court extends the time limit set forth in section 4 or 5, the Court shall determine whether the limit may be recomputed by excluding time pursuant to 18 U.S.C. § 3161(h).
- (iii) If it is determined that a continuance is justified, the Court shall set forth its findings in the record, either orally or in writing. If the continuance is granted under 18 U.S.C. § 3161(h)(8), the Court shall also set forth its reasons for finding that the ends of justice served by granting the continuance outweigh the best interests of the public and the defendant in a speedy trial. If the continuance is to a date not certain, the Court shall require one or both parties to inform the Court promptly when and if the circumstances that justify the continuance no longer exist. In addition, the Court shall require one or both parties to file periodic reports bearing on the continued existence of such circumstances. The Court shall determine the frequency of such reports in light of the facts of the particular case.

7. Minimum Period for Defense Preparation.

Unless the defendant consents in writing to the contrary, the trial shall not commence earlier than thirty (30) days from the date on which the defendant first appears through counsel or expressly waives counsel and elects to proceed *pro se*. In circumstances in which the seventy (70) day time limit for commencing trial on a charge in an indictment or information is determined by reference to an earlier indictment or information pursuant to section 4(d), the thirty (30) day minimum period shall also be determined by reference to the earlier indictment or information. When prosecution is resumed on an original indictment or information following a mistrial, appeal, or withdrawal of a guilty plea, a new thirty (30) day minimum period will not begin to run. The Court will in all cases schedule trials so as to permit defense counsel adequate preparation time in light of the circumstances. [18 U.S.C. § 3161(c)(2)].

8. Time Within Which Defendant Should Be Sentenced.

(a) **Time Limit.** Sentencing proceedings shall be scheduled no earlier than seventy five (75) days following the entry of a verdict of guilty or a plea of guilty or *nolo contendere* unless all the parties and the Court agree that, in the interest of justice, an earlier date should be set.

(b) **Related Procedures.** Presentence investigations and reports shall be prepared in accordance with Rule 32 of the Federal Rules of Criminal Procedure and the Local Procedure as set forth at Rule 32.1 of the Local Rules of Criminal Procedure.

9. Juvenile Procedures.

(a) Time Within Which Trial Must Commence. An alleged delinquent who is in detention pending trial shall be brought to trial within thirty (30) days of the date on which such detention was begun, as provided in 18 U.S.C. § 5036.

(b) Time of Dispositional Hearing. If a juvenile⁴ is adjudicated delinquent, a separate dispositional hearing shall be held no later than twenty (20) court days after trial, unless the Court has ordered further study of the juvenile in accordance with 18 U.S.C. § 5037(d).

10. Sanctions.

(a) Dismissal or Release from Custody. Failure to comply with the requirements of Title I of the Speedy Trial Act may entitle the defendant to dismissal of the charges against him or her or to release from pretrial custody. Nothing in this plan shall be construed to require that a case be dismissed or a defendant released from custody in circumstances in which such action would not be required by 18 U.S.C. § 3162 and 3164.⁵

⁴A "juvenile" is a person who has not attained his/her eighteenth birthday, or for the purpose of proceedings and disposition under this chapter for an alleged act of juvenile delinquency, a person who has not attained his/her twenty-first birthday, and "juvenile delinquency" is the violation of law of the United States committed by a person prior to his/her eighteenth birthday which would have been a crime if committed by an adult. [18 U.S.C. § 5031].

⁵Dismissal may also be required in some cases under the Interstate Agreement on Detainers, 18 U.S.C., Appendix II.

(b) *High-Risk Defendants.* A high-risk defendant whose trial has not commenced with the time limit set forth in 18 U.S.C. § 3164(b) shall, if the failure to commence trial was through no fault of the attorney for the government, have his or her release conditions automatically reviewed. A high-risk defendant who is found by the Court to have intentionally delayed the trial of his or her case shall be subject to an order of the Court modifying his or her nonfinancial conditions of release under Chapter 207 of Title 18 U.S.C., to ensure that he or she shall appear at trial as required. [18 U.S.C. §3164(c)].

(c) *Discipline of Attorneys.* In a case in which counsel (i) knowingly allows the case to be set for trial without disclosing the fact that a necessary witness would be unavailable for trial, (ii) files a motion solely for the purpose of delay which he or she knows is frivolous and without merit, (iii) makes a statement for the purpose of obtaining a continuance which he or she knows to be false and which is material to the granting of the continuance, or (iv) otherwise willfully fails to proceed to trial without justification consistent with 18 U.S.C. § 3161, the Court may punish such counsel as provided in 18 U.S.C. § 3162(b)& (c).

(d) *Alleged Juvenile Delinquents.* An alleged delinquent in custody whose trial has not commenced within the time limit set forth in 18 U.S.C. § 5036 shall be entitled to dismissal of his or her case pursuant to that section unless the Attorney General shows that the delay was consented to or caused by the juvenile or his or her counsel, or would be in the interest of justice in the particular case.

11. *Persons Serving Terms of Imprisonment.*

If the United States Attorney knows that a person charged with an offense is serving a term of imprisonment in any penal institution, he or she shall promptly seek to obtain the presence of the prisoner for trial, or cause a detainer to be filed, in accordance with the provisions of 18 U.S.C. § 3161(j).

12. *Effective Date.*

This revision to the District's Plan was approved by the Court on the 15th day of November, 1994 and shall become effective upon the approval of the reviewing panel in accordance with 18 U.S.C. § 3165(d).

Chief Judge Thomas J. McAvoy

January 17, 1995
(Date of Approval by Circuit Council)

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